IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 807 of 1999

with

SPECIAL CRIMINAL APPLICATION No 851 of 1999

to

SPECIAL CRIMINAL APPLICATION No 861 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRAKUMAR SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN K PAHWA for Petitioners

MR SAMIR J DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/03/2001

ORAL JUDGEMENT

#. Special Criminal Application No.807 of 1999 is filed by 12 petitioners. I do not find any order on record of this petition where this court has directed the petitioners to file individual petition but the individual petitions have been filed by petitioner Nos. 2 to 12 which are Special Criminal Application Nos.851 of 1999 to 861 of 1999. In view this fact all these matters are taken up for hearing together and are being decided by this common order.

##. The facts of the case are taken from Special Criminal Application No.807 of 1999 as are given in this petition. Other petitions are one page petitions. In these petitions the petitioners are praying for issuance of writ of certiorari and/or any other appropriate writ, order or direction, restraining the respondents from compelling the petitioners to compound the offences for breach of Rule85(9) of Central Motor Vehicles Rules, 1989. These writ petitions are not well drafted. These are lacking in all material details and facts. Even it is not given out what is the nature of the permit which was granted to the petitioners. Not only this, the copy of the permit is also not produced on the record, meaning thereby everything has to be guessed and decided by this court.

So as to the State of Gujarat and Transport Commissioner are concerned as usual, they act like silent spectators in these matters as if have no concern with it, which is clearly borne out from the fact that reply to the special Criminal Applications has not been filed on their behalf.

In these petitions notices were issued on 22.9.99 and though about one year 9 months have already passed the respondent - State of Gujarat and Transport Commissioner have not bothered to file reply. Looking to the seriousness of the matter I called Secretary, Transport Department, Gandhinagar in the court on 12.12.2000 to understand the points raised in these matters.

#. Having heard learned counsel for the parties and talking to the Secretary, Transport Department, Gandhinagar on 12.12.2000 I find that the petitioners are having the permits in respect of tourist vehicles. Subsection (9) of Section 88 of the Motor Vehicles Act,

1988 (hereinafter referred to as the Act) provides that "notwithstanding any thing contained in subsection (1) but subject to any rules that may be made by the Central Government under subsection (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of Sections 73, 74, 80, 81, 82, 83, 84, 85, 86, [clause (d) of subsection (1) of Section 87 and Section 89] shall, as far as may be, apply in relation to such permits."

Tourist vehicle has been defined in Clause 43 of Section 2 of the Act which means "a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf". The permit granted under section 88(9) of the Act, 1988 in respect of tourist vehicle is subject to any rules that may be made by the Central Government and as the petitioners are holders of permit in respect of tourist vehicle the rule 85 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the Rules, 1989) shall apply in the present case.

Rule 85 of the Rules, 1989 provides the additional conditions of every tourist permit granted to a tourist vehicle other than a motor cab under subsection (14) of Section 88 of the Act, 1988 and in this case we are concerned with sub-rule 9 thereof which reads as under :-

(9) The permit holder shall not operate the tourist vehicle as a stage carriage."

Stage carriage as per Clause 40 of Section 2 of the Act, 1988 means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. Contract carriage as per clause 7 of the Section 2 of the Act, 1988 means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey.

#. The learned counsel for the petitioner contended that the officers of the Transport Department or Police Department evolve arms twisting method to force tourist permit holder to compound offence of breach of condition of permit which is deprecated by the Hon'ble Supreme Court in the case of Transport Commissioner, Andhra Pradesh Vs. Sardar Ali, Bus Owner, AIR 1983 SC 1225. It is submitted that where the permit holder contravenes condition of permit it may be an offence but owner or person in-charge cannot be compelled by these officers to compound the same. In such case, they can challan the vehicle and file complaint in the court. Referring to Section 207 of the Act, 1988 the learned counsel for the petitioner urged that for violation of permit condition the vehicle may not be seized as it causes inconvenience to the travelling passengers. Lastly, it is contended that the offence punishable under Section 192A of the Act, 1988 is not compoundable with effect from 11.11.1994. In support of this contention the learned counsel for the petitioner placed reliance on the judgment of the Division Bench of this court. It is to be stated that the petitioner here also does not give out details of the decision of the Division Bench of this Court.

#. In contra the learned counsel for the respondents contended that on the contravention of the condition of the permit the officers of Transport and Police Department have all the power to seize and detain the vehicle and reference is made to Section 207 of the Act, 1988. It has next been contended that in the case where the vehicle is seized and detained by the officers of the Transport or Police Department under Section 207 of the Act, 1988 it is not necessary for them to file a challan and reported the seizure of the vehicle to the court. Under subsection (2) of Section 207 of the Act, 1988 what the learned counsel for the respondents contended that the power rests with the Transport authority or any officer authorised in this behalf on behalf of the State to release the vehicle subject to such conditions as the authority or officer may deem fit to impose. It is a

case where the petitioners have breached the conditions of the permit and rightly the actions are being taken by the transport officers and the vehicles were seized and detained. On the application of the owner or in charge of the vehicle for releasing the same authority or officer as the case may be has all the power to put conditions including asking him to compound all NC memos pending while releasing the vehicle.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. The validity of Rule 85 (9) of the Rules, 1989 is not under challenge in these petitions, meaning thereby, Rules, 1989 has to be taken to be a valid piece of legislation. Sub-rule (9) of rule 85 of the Rules, 1989 lays down a statutory condition which is to be there in each tourist permit granted to a tourist vehicle. It is not the case of the petitioners that they are not holder of the tourist permits of tourist vehicle. It is also not their case that in their permit this condition is not incorporated. In this case it is an accepted position that under Rule 85 of the Rules, 1989 there is a statutory condition which is to be put to every tourist permit granted to a tourist vehicle and the permit holder shall not operate the tourist vehicle as a stage carriage and secondly, this condition is specifically mentioned in the permits granted to the petitioners. Third accepted position is that Rule 85 of the Rules, 1989 is a valid rule framed under subsection 14 of section 88 of the Act, 1988.

#. Now the question which falls for consideration is whether the respondents can compel the petitioner to compound the offence for breach of Rule 85 (9) of the Rules, 1989. Section 207 of the Act, empowers any police officer or other person authorized in his behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of sect. 3 or sec. 4 or sec. 39 or without the permit required by subsection (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purposes for which vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle. Subsection (1) of section 207 of the Act empowers the police officer or any other person authorized in this behalf by the State Government to seize and detain the vehicle, in the prescribed manner

and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle where the permit holder has contravened any condition of such permit relating to the route on which or the area in which or the purposes for which the vehicle may be used. Proviso to this subsection gives a discretion to any such officer or person instead of seizing the vehicle, to seize the certificate of registration of the vehicle where he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of sec.3 or sec. 4 or sec.39 or without the permit required by subsection (1) of section 66 of the Act. Subsection (2) of section 207 provides that where a motor vehicle has been seized and detained under subsection (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorized in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.

#. Section 177 of the Act makes a general provision for punishment of offences. This section provides that whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

##. From the petition, I find that the petitioners raised a contention that the offence under section 192-A of the Act, 1988 is not compoundable. Section 200 of the Act give a list of offence which are compoundable and therefrom I find that section 192-A is not there. Section 192-A of the Act, 1988 provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of subsection (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose of which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extent to one year but shall not be less than three months or with fine which may extent to ten thousand rupees but shall not be less than five thousand rupees or with both. From reading of this section it leaves no doubt whatsoever

that whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of subsection (1) of section 66 or in contravention of any condition of a permit it is an offence. In this case if we go by the petitioners' own prayer, they also in unequivocal terms admit that plying of the vehicle in contravention of condition of permit relating to the route on which or the area in which or the purpose for which the vehicle may be used is an offence. I find sufficient merits in the grievance of the petitioners that the offence committed by a permit holder or a driver under sec. 192-A of the Act is not compoundable. In case where the police officer or any other officer authorized by the State Government in this behalf challan the driver or owner of the vehicle under section 192-A of the Act certainly they have no right to compel the driver or the owner to compound the offence. It is not the compulsion on the accused of an offence to compound the same. Even in a case where the offence is compoundable nobody can compel nor there is any provision of law which puts an obligation on an accused to compound the offence. Fruitfully here the reference may have to the decision of the apex court in the case of P.Ratnakar Rao and Ors. Vs. Government of Andhra Pradesh and Ors. (1996) 5 SCC 359 wherein the court held;

"The contention raised before the High Court and repeated before us by Shri Rajeev Dhavan, the learned Senior Counsel for the petitioners is that the discretion given in Section 299(1) of the Act is unguided, uncanalised and arbitrary. Until an accused is convicted under Section 194, the right to levy penalty thereunder would not raise. When discretion is given to the court for compounding of the offence for the amount mentioned under Section 200, it cannot be stratified by specified amount. It would, therefore, be clear that the exercise of power to prescribe maximum rates for compounding the offence is illegal, arbitrary and violative of Article 14 of the Constitution. We find no force in the contention. For violation of Section 113 to 115, Section 194 accords penal sanction and on conviction for violation thereof, the section sanctions punishment with fine as has been enumerated hereinbefore. The section would give guidance to the State Government as a delegate under the statute to specify the amount for compounding the offences enumerated under sub-section (1) of section 200. It is not mandatory that the authorised offence would

> always compound the offence. It is conditional upon the willingness of the accused to have the offences compounded. It may also be done before the institution of the prosecution case. In the event of the petitioner's willing to have the offence compounded, the authorised officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated. It is a matter of volition or willingness on the part of the accused either to accept compounding of the offence or to face the prosecution in the appropriate court. As regards canalisation and prescription of the amount of fine for the offences committed, Section 194, the penal and charging section prescribes the maximum outer limit within which the compounding fee would be prescribed. The discretion exercised by the delegated legislation, i.e., the executive is controlled by the specification in the Act. It is not necessary that Section 200 itself should contain the details in that behalf. So long as the compounding fee does not exceed the fine prescribed by the penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance."

Where this is the position of law, certainly I find sufficient merits in the contention of the learned counsel for the petitioners that the Police officer or officer authorized in this behalf by the State Government cannot compel the driver or the owner of the vehicle to compound the offence committed by them under section 192-A of the Act, 1988. It is to be made clear that even for offences which are compoundable under sec. 200 of the Act, 1988 these officers cannot compel the accused to compound the same.

##. In view of this position of law, it is to be declared that in case of the contravention of the condition of permit or the condition as provided under Rule 85 (9) of the Rules, 1989 where driver or the owner of the vehicle is not compounding the offence, the Police officer or the officer empowered in this behalf cannot compel them to compound the offence.

##. Bare perusal of the provisions contained under Section 192A and 207 of the Act, 1988 a pre-condition to

the seizure and detention of the vehicle under later section the police officer or authorised person must have reason to believe that one or other offence specified and punishable under former section has been or is being committed. Section 4 of Criminal Procedure Code 1974 provides that all offences under Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code. This very section provides that all other officers under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions i.e. of Code of Criminal Procedure, 1974. One exception has been carved out i.e. subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 91 of the Criminal Procedure Code, 1974 Chapter VII thereof relates to the summons to produce documents or other things. Under this provision the court can compel the production of the things. This section reads as under :-

"91. Summons to produce documents or other thing-(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 to 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

##. From bare perusal of these provisions of the Cr.P.C. and the Act, 1988 a motor vehicle regarding whose custody arrangement shall be made under Section 207 of the Act, 1988 by the police officer or the authorised person seizing the vehicle must be considered to have been produced before the criminal court as soon as the complaint is filed before the court alleging the commission of offence under Section 192A regarding vehicle. Otherwise also, where on the seizure of the vehicle by the police officer or the authorised person the same is not produced before the criminal court as soon as complaint is filed the criminal court has ample power under Section 91 of the Cr.P.C., 1974 in particular to compel the production of vehicle before it. The custody of the vehicle on seizing thereof under Section 207 in the hands of the police officer or the authorised person is temporary and, therefore, he is obliged to act and take all further steps in the matter with all expedition. The reference here may have to decision of the apex court in the case of Transport Commissioner, Andhra Pradesh, Hyderabad & Anr. Vs. S. Sardar Ali & Ors. reported in AIR 1992 SCC 1125. In this decision Their Lordships of Hon'ble Supreme Court observed that Section 129-A of the Act contemplates 3 situations where the police officer or authorised person may seize and detain the vehicle. These 3 situations are; (i) where he has reason to believe that motor vehicle has been or is being used in contravention of provisions of Section 22; (ii) Where he has reason to believe that mother vehicle has been used without permit required by sub-section (2) of Section 42 and (iii) where he has reason to believe that the motor vehicle has been or is being used in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. Precisely, condition No.3 contemplated by section 192A of the Act, 1988 breach thereof is made punishable. Power given under Section 207 of the Act, 1988 to seize and detain vehicle is to be exercised by police officer or authorised person when he has reason to believe that an offence under section 192-A has been or is being committed. Their Lordships of Hon'ble Supreme Court of India in the case of Transport Commissioner, Hyderabad v. S. Sardar Ali (Supra) held that after detecting the commission of the offence punishable under the Motor Vehicles Act the next proper

step for the police officer or the authorised person would be to consider the question whether the offence should be compoundable as provided under the Act and notification by the Government on that behalf. Here as already said in the preceding paragraphs that offences under Section 192-A of the Act, 1988 is not compoundable, the police officer or the authorised person needs not to consider this aspect of the compounding of the offences. In the case aforesaid, their Lordships of Hon'ble Supreme Court said that the next logical and appropriate step for the police officer or the authorised person would be to laying complaint before the court to take cognizance of the offence subject to provisions of the Act, 1988. Their Lordships of Hon'ble supreme Court held that a transport vehicle involved in commission of offence is seized the seizure is generally expected to serve manifold purpose. These are to prevent repetition of offence, to use the things seized as material evidence in the prosecution, to preserve the property so as to enable the court to pass appropriate order for disposal by way of destruction, confiscation or delivery to any person claiming to be entitled to the possession thereof or otherwise. It is said that there is no reason to assume that seizure under the Motor Vehicles Act of the vehicle has any difference and is not to serve any of these purposes or any purpose at all, after seizure and detention of the vehicle by the police officer or by any authorised person under Section 207 of the Act, 1988. In view of this provision as said in the proceedings paragraphs the detention of the vehicle by the police officer or by the authorised person is to be temporary. This temporary detention may continue until appropriate orders re. the disposal of the vehicle are made. Where offence is not compoundable even where the owner or in-charge of vehicle is willing to compound the offence it is of no significance, importance and relevant in the matter. Sub-section (2) Section 207 of the Act empowers the transport authority or any officer authorised in this behalf of the State Government on the application of the owner or person in-charge of the motor vehicle may release the vehicle after verification of documents subject to conditions as the authority or officer deemed fit to impose. This power is exercisable by the Transport Authority or any officer authorised in this behalf by the State Government where the owner or the in-charge of the vehicle seized applies for the release of the same. Where this provision is not resorted to by owner or in-charge of seized and detained vehicle where the remedy lies or available to him for the release of the same is a question does fall for consideration. The answer to this question is very obvious that lies with

the criminal court under Sections 457 and 451 of the Cr.P.C. But unless the complaint is filed by the police officer or any other person authorised in this behalf by the State Government the Criminal Court may not be ceased of the matter to exercise power under Section 451 of Criminal Procedure Code, 1974 to pass appropriate order to release of the vehicle. Sine qua non for exercise of powers by the criminal court under Section 451 of the Criminal Procedure Code is that the complaint is before it. It is not in the hand of the owner or the in-charge of the vehicle to compel the police officer or other person authorised in this behalf by the State Government to file the complaint forthwith. In the case of Transport Commissioner, Andhra Pradesh, Hyderabad & Anr. Vs. S. Sardar Ali & Ors. (supra) Their Lordships of Hon'ble Supreme Court held;

"If it is not compounded, a complaint has to be laid If it is not compounded, a complaint has to be laid before the Court empowered to take cognizance of the case and the case proceeded with. As soon as the complaint is laid, the Court acquires jurisdiction to pass appropriate orders regarding 'the custody' and the 'the disposal' of the vehicle. We have already noticed how Section 4 (2) of the Code of the Criminal Procedure stipulates that offences under laws other than the Penal Code also are to be investigated, inquired into, tried and otherwise dealt with in accordance with the provisions of the Code of Criminal Procedure. The provisions of Chapter XXXIV of the Code relating to 'Disposal of Property' are also therefore attracted in dealing with offences under the Motor Vehicles Act. Section 452 of the Code enables the Court, at the conclusion of an inquiry or trial to "make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence". The Court thus has the power at the conclusion of the case to make appropriate orders regarding the disposal of the motor vehicle regarding which an offence appears to have been committed. So far as the custody of the vehicle pending the conclusion of the case is concerned,

> the Court may either treat the arrangement made by the officer or person acting under S. 129-A as sufficient or may itself make further or other orders. Section 451 of the Code of Criminal Procedure empowers the Court, when any property is produced before it during any inquiry or trial, to make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. We think that a motor vehicle regarding whose temporary custody arrangements have been made under sec. 129-A of the Motor Vehicles Act by the police officer or the authorised person seizing the vehicle must be considered to have been produced before the Criminal Court as soon as a complaint is filed before the Court alleging the commission of an offence under sec. 123 regarding the vehicle. In any case, the Court has ample power under Chapter VII of the Code, Section 91 in particular, to compel the production of the vehicle before the Court. Thus if the provisions of the Motor Vehicles Act are read in conjunction with the provisions of the Code of Criminal Procedure and there is no getting away from the provisions of both the laws-it is seen that there is no lacuna whatsoever in regard to the proper custody and disposal of the motor vehicle seized under sec. 129-A of the Motor Vehicles Act. The custody of the vehicle in the hands the police officer or the authorised person is but temporary and he is therefore, obliged to act and take all further steps in the matter with all expedition. If he releases the vehicle on being satisfied that no offence has been committed or if he releases the vehicle on the offence being compounded, no further question arises. If, instead, he lays a complaint before the Court, the court acquires instant jurisdiction over the vehicle to pass suitable orders. In the remote event of the police officer or the authorised person not taking any further action after seizing and detaining the vehicle, the owner of the vehicle is not without remedy. Art. 226 is always available but one does not have to presume that the police officer or the authorised person may not act according to law."

##. The difficulty arises and in fact it would have been faced by owner or in-charge of the vehicle in the case where for the commission of offence for which the vehicle is seized and the complaint is not filed in the court.

Though the apex court held that in such eventuality also the owner or the in-charge of the vehicle is not remediless, he may come before this court under Article 226 of the Constitution of India for release of the vehicle. But in the present scenario where the courts are heavily burdened with the work and secondly heavy cost of litigation whether the owner or in-charge of the vehicle is to be left at the receiving end at the mercy of the police officer or person authorised in this behalf by the State Government? In the matter of seizure or detention of the vehicle under Section 207 of the Act, 1988 the owner or the in-charge of the vehicle are approaching to this court for release thereof, which is clear from the facts of this case and the documents annexed to the petition and documents produced with other matters for releasing of the vehicles. From the facts of these cases I find and it is also noticed in many other cases that the police officer or the person authorised in this behalf by State Government though seized and detained the vehicle but they are not filing the complaints in court. In many cases I find that cases of non-compoundable offences against the operator in the department are pending in large number, but complaints are not filed in the courts. The modus operandi appears to have been and which is also clearly born out from the facts of these cases also that the police officer or the person authorised in this behalf by the State Government to force the owners of the vehicles to surrender to their demands and desires.

##. Subsection (2) of section 207 of the Act, 1988, though gives powers to the Transport Authority or any Officer authorised in this behalf to release the vehicle on application of the owner or the in-charge, and while releasing the vehicle he can put the conditions. When this subsection empowers to put the condition, naturally the Transport Authority or the authority empowers in this behalf can compel the owner or in-charge of the vehicle to settle the pending memos. Section 468 of the Cr.P.C., 1973, puts a bar to take cognizance in criminal case after the lapse of period of limitation. The complaints are not filed in the Court within limitation then naturally the Court cannot take the cognizance. In many of the cases, I called the record of the Transport Department and I found that in most of the N.C. memos, limitation expired for filing of the complaint and that way the owner or the in-charge of the vehicle gets the detained and seized vehicle released from the Court and Department on the other hand sits tight over the complaint which becomes barred by limitation. Release of the vehicle is one thing and it is not the acquittal of

the accused in an offence committed under the Act, 1988 but this way the Transport Department permits indirectly the acquittal of these persons in thousands of cases by not filing complaints in time in the Courts. As said earlier, they are keeping these maters pending so as to compel and force the owner or in-charge of the vehicle to settle the matters but the other side has also to be considered and when the Court are liberally releasing the vehicle they should have taken care that challans are filed in the Court so that the offenders may not be set free from the offence.

##. This Court sitting under Article 226 of the Constitution, because of this action of the Transport Officers, the Police Officers or the officer empowered in this respect by the State Government, is converted into a Court of Judicial Magistrate. This Court is heavily burdened by such litigations only for the reason that the Police Officers or the Officers authorised in this respect by the State Government either are not aware of the provisions of the Act, 1988 and Cr.P.C. or are deliberately not filing the complaints in the cases. After seizure and detention of the vehicle under section 207 if the owner or in-charge of the vehicle does not apply to the officer concerned for release thereof immediately or within reasonable time, then the complaint is to be filed in court. Even in the case where the owner or in-charge of the vehicle applies for release of the vehicle and conditional order of release of the vehicle is passed and condition onerous certainly is nothing but an order in papers. By this modus-operandi which is adopted may be deliberately the vehicles remain under seizure and detention for a long period with these officers. These officers may also not have the proper place for temporary custody of the seized and detained vehicles. In a case where for commission of offence, the police officer or the person empowered in this behalf by the State Government exercises its power to seize and detain the vehicle and it is seized and detained and then and there or within a day or two, the owner or the in-charge of the vehicle does not apply for the release thereof, the officer concerned in all fairness has to file a complaint in the Court. So far as the vehicle is concerned, what their Lordships of apex court in the case of Transport Commissioner, Hyderabad vs. S. Saradarali (supra) said that those officers may not produce the vehicle with the complaint. The custody of the vehicle with them be considered to be in the custody of the Court. So it is open to them to produce or may not produce the vehicle in court with challan. In that case, naturally, the owner or in-charge of the vehicle may have

a right to apply for release of the vehicle pending trial of the case. This is what the apex court held. Though this decision was given in the year 1983, the Police Officers or the persons authorised in this behalf by the State Government are not acting in accordance with this rule of law settled and decided by the apex court.

##. Looking to the inconvenience and difficulty, both of the owner and in charge of the vehicle as well as the passengers and to check the avoidable litigations which are coming up before this Court, I consider it to be appropriate to give directions in this respect to the State of Gujarat how matters of this nature are to be dealt with by the Police Officers or the Officer authorised in this behalf by it under the Act, 1988. these are as under:-

(i) In a case where for the offence committed under the Motor Vehicles Act, 1988, the Police Officer or other person authorised in this behalf by the State Government, seizes and detains the motor vehicle, the Officer concerned has to inform to the owner or in-charge of the vehicle on the spot re. provision as contained in subsection (2) of section 207 of the Act, 1988, and where he applies for the release of the vehicle, then and there the order be made. However, while passing that order the Officer may not impose this condition of clearing all the pending departmental cases i.e. N.C. memos. However, what ever legally permissible other conditions available may be imposed.

(ii) If that conditional order is accepted by the owner or in-charge of the vehicle then there is no problem. However, in the case where the owner or in-charge of the vehicle does not apply for release of the vehicle or has not accepted the conditional order passed for release of the vehicle by the officer authorised, the challan in that case to be submitted in the Court on the very day, if time is available, or in all the eventualities, within a day or two. It is open to the officer authorised either to keep the vehicle in his custody or produce the same in the Court.

(iii) In the case where the vehicle is seized and detained and challan has not been filed within the time aforesaid by the officer authorised in this behalf it is open to the owner or in-charge

of the vehicle to ask the said officer in writing to produce the challan and in case within a day or two of this demand, challan is not filed in the court then only he may resort to the remedy under Article 226 of the Constitution of India, and not otherwise.

##. In case, these directions are not scrupulously followed and adhered to by the officers authorised and any matter comes before this Court for release of the vehicle under Article 226 of the Constitution, the Court, on being satisfied for noncompliance of these directions, may held personally responsible to the officer concerned for the costs of litigation as well as direction may also be given for initiating disciplinary action against him. It is expected from the Secretary, Transport Department of the State of Gujarat as well as the Home Secretary to the State of Gujarat to issue necessary directions in the light of this judgment to all of its officers who are empowered to seize and detain the vehicle under section 207 of the Act, 1988 so that there may not be any further litigation in this respect re. release of the vehicle seized and detained before this Court.

##. In the result, all these special criminal applications and Rule therein stand disposed of accordingly. However, in the facts of this case, no order as to costs. Secretary to the Transport Department and Home Department of the State of Gujarat are directed to report compliance of this order to the Court.

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Pvv/zgs